

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

AUGUST IMAGE, LLC; and MARK  
SELIGER,

Plaintiffs,

v.

GIRARD ENTERTAINMENT & MEDIA LLC;  
and KEITH GIRARD,

Defendants.

Civil Action No.: 1:23-cv-01492-VEC

**DECLARATION OF MARK SELIGER IN  
OPPOSITION TO DEFENDANTS'  
MOTION FOR ATTORNEY'S FEES**

**DECLARATION OF MARK SELIGER**

I, Mark Seliger, hereby declare as follows:

1. I am above eighteen (18) years of age and am competent to give the testimony set forth below. Said testimony is given from my own personal knowledge. I make this declaration in opposition to Defendants' Motion for Attorney's Fees. If called as a witness, I could and would competently testify as set forth below.
2. I am a plaintiff in this action, and am a professional photographer working with August Image, LLC ("August") regarding the lawful licensing of my work and the protection of my rights in my photography.
3. I have been a professional photographer for over 35 years. From 1992 to 2002, I was Chief Photographer for Rolling Stone, during which time I shot over 188 covers for the magazine. From 2002 to 2012 I was under contract with Condé Nast Publications for *GQ* and *Vanity Fair* and have shot for numerous other magazines. I have published several books, including *When They Came to Take My Father: Voices of the Holocaust*, *Physiognomy*, and *On Christopher Street: Transgender Stories*, and my photographs are included in the permanent collections of the National Portrait Gallery at the Smithsonian Institution, the Museum of Fine Arts in Houston, and the National Portrait Gallery in London. I have also commercial photography for Adidas, Amazon, Anheuser-Busch, Apple, Dom Pérignon, Fila, Gap, HBO, Hourglass Cosmetics, Hulu, KITH, Lee Jeans, Levi's, McDonald's, Netflix, Ralph Lauren, Ray-Ban, Rolex, Showtime, Sony, Universal and Viacom, among others.
4. Protecting my work from infringement is critical to my livelihood as a professional photographer. I work with companies like August to not only license my work to those who want to use it but to address claims against those who use my work without license.

5. When I review unauthorized uses of my work, I always consider whether the use appears to be what I understand as fair use before taking legal action, and there have certainly been numerous unauthorized uses of my work that I have not pursued because they potentially qualified as fair use.
6. I did not believe, and still do not believe, that the unauthorized use of my photograph by the Defendants in this case was fair, as it seemed to me that the article at issue was not reporting on my work, including as part of Mr. Schwimmer's Instagram post, or using my work in any transformative way. Instead, it looked to be simply using my work as a banner image on a tangentially, if at all, related article.

I declare, under penalty of perjury, that the foregoing is true and accurate to the best of my knowledge.

Executed on April 26, 2024 in

New York, NY

By

Mark Seliger  
Declarant